

## 9 REQUEST FOR PROPOSALS

Formal Invitation To Bids cannot always address the needs of the state, especially when generic specifications are not available or difficult or impossible to draft and conventional evaluation for award cannot be made on absolute criteria. For example, high technology products and complex services are not amenable to conventional bidding. The *Request For Proposal* is a solicitation used for situations like these. Request for Proposals for property or services exceeding one (1) year and/or expected to cost over \$50,000 are considered to be “large purchases” and purchased or procured with formal methods.

### 9.1 Methods

The Request For Proposal is a competitive formal sealed process that is legally binding and evaluated according to predetermined weighted standards. The RFP outlines the purpose, scope, description, minimum requirements or expectations, qualifications or capability of the proposers, evaluation criteria, and other requirements. In the RFP response, the vendor offers a solution for the particular need described in the RFP. The RFP allows for discussions with vendors to explain or clarify proposals in a “Best and Final Offer” and allows for “Competitive Negotiations.”

For detailed instructions on planning, creating, and evaluating RFP’s see the publication *Guidelines for Developing a Request For Proposal* available at the Idaho Division of Purchasing web site.

### 9.2 Property or Services Exceeding \$50,000

*Idaho Code 67-5718...Procedure for Bidding (2)*, states that notice shall be posted of all acquisitions of property, unless otherwise excepted by rules of the Division of Purchasing and that (3) to enhance small business bidding opportunities, the administrator shall seek a minimum of three (3) bids from vendors having a significant Idaho economic presence as defined in *Idaho Code 67-2349*.

All formal RFPs are posted on the Internet and in hard copy at the Division of Purchasing office. All RFPs describe the property or service to be acquired in sufficient detail to apprise a bidder of the exact nature or functionality of the property or service required, scope of work, specifications, terms and conditions, and set forth the bid closing and opening date, time, and location.

### **9.3 Some Common Uses of the Request For Proposal**

Information Technology: software, hardware, or services relating to such items as imaging, video conferencing, leasing, data management systems, network services, and maintenance and repair.

Professional and Consultant Services: such as artists, accountants, lawyers, nurses, doctors, educators, engineers, architects, technical consultants, auditors, and researchers.

Services: where skills, expertise, and capability must be evaluated such as janitorial, laboratory testing, financial management, artwork and graphic design, travel services and management, and warehousing and distribution.

Products and Delivery Services: such as purchase and delivery of office supplies and laboratory supplies.

### **9.4 Division of Purchasing Rules Pertaining to Invitation to Bids and Proposals**

**IDAPA 38.05.01.051 - .093**

**051. CONTENT OF THE INVITATION TO BID OR REQUEST FOR PROPOSALS.** The following shall be included in an invitation to bid or a request for proposals:

**01. Submission Information.** Information regarding the applicable opening date, time and location.

**02. Specifications.** Specifications developed in accordance with these rules including, if applicable, scope of work.

**03. Contract Terms.** Terms and conditions applicable to the contract.

**04. Evaluation Criteria.** Any evaluation criteria to be used in determining property acceptability.

**05. Trade-In Property.** If trade-in property is to be included, a description of the property and location where it may be inspected.

**06. Incorporation By Reference.** A brief description of any documents incorporated by reference that specifies where such documents can be obtained.

**052. CHANGES TO INVITATION TO BID OR REQUEST FOR PROPOSALS.**

An invitation to bid or request for proposals may be changed by the buyer through issuance of an addendum, provided the change is issued in writing prior

to the bid opening date and is made available to all vendors receiving the original solicitation. Any material information given or provided to a prospective vendor with regard to an invitation to bid or request for proposals shall be made available in writing by the buyer to all vendors receiving the original solicitation. Oral interpretations of specifications or contract terms and conditions shall not be binding on the division unless confirmed in writing by the buyer and acknowledged by the division prior to the date of the opening. Changes to the invitation to bid or request for proposals shall be identified as such and shall require that the vendor acknowledge receipt of all addenda issued. The right is reserved to waive any informality.

**053. PRICE ESCALATION.**

Contractors shall not be entitled to price escalation except where specifically provided for in writing in the contract or purchase order.

**054. -- 060. (RESERVED).**

**061. FORM OF SUBMISSION.**

**01. Manual Submissions.** Unless otherwise provided in these rules, to receive consideration, in addition to any specific requirements set forth in the invitation to bid or request for proposals, bids or proposals submitted manually must be made on the form provided, which form must be properly completed and signed in ink. Photocopy or facsimile signatures will be rejected. All changes or erasures shall be initialed in ink. Unsigned or improperly submitted bids or proposals will be rejected. Telegraphed, telephonic or facsimile submissions will not be accepted except for emergency and small purchases. The purchasing activity does not assume responsibility for failure of any equipment.

**02. Electronic Submissions.** To receive consideration, in addition to any specific requirements set forth in the invitation to bid or request for proposals, bids or proposals submitted electronically must be submitted in accordance with and meet all applicable requirements of these rules. The purchasing activity does not assume any responsibility for failure of any computer or other electronic equipment.

**062. -- 070. (RESERVED).**

**071. PRE-OPENING WITHDRAWAL OR MODIFICATION.**

Manual submissions may be withdrawn or modified only as follows: Bids or proposals may be withdrawn or modified prior to the closing by written communication signed in ink by the submitting vendor. Bids or proposals may be withdrawn prior to closing in person upon presentation of satisfactory evidence establishing the individual's authority to act on behalf of the submitting vendor. Bids or proposals may be withdrawn or modified by telegraphic communication provided the telegraph is received prior to the closing. The withdrawal or

modification, if done via telegraph, must be confirmed in writing signed in ink. The written confirmation must be mailed and postmarked no later than the closing date. If the written confirmation of the withdrawal or modification is not received within two (2) working days from the closing date, no consideration will be given to the telegraphic modification. Any withdrawing or modifying communication, including a telegram, must clearly identify the solicitation. A modifying letter or telegram should be worded so as not to reveal the amount of the original bid or proposal. No other form of withdrawal or modification (e.g., telephone or facsimile) will be accepted.

## **072. LATE BIDS/PROPOSALS, LATE WITHDRAWALS AND LATE MODIFICATIONS.**

Any bid or proposal, withdrawal or modification received after the time and date set for opening at the place designated for opening is late. No late bid or proposal, late modification or late withdrawal will be considered. All late bids, other than clearly marked "no bids", will be returned to the bidder. Time of receipt will be determined by the official time stamp or receipt mechanism located at the purchasing activity. The purchasing activity does not assume any responsibility for failure of any delivery services or means or for the failure of any computer or other electronic equipment.

## **073. RECEIPT, OPENING, AND RECORDING OF BIDS AND PROPOSALS.**

Upon receipt, all bids, proposals and modifications properly marked and identified will be time stamped, but not opened. They shall be stored in a secure place until bid opening time. Time stamping and storage may be through electronic means. Bids shall be opened publicly at the date and time specified in the invitation to bid. Proposals shall be opened publicly, identifying only the names of the offerors unless otherwise stated in the request for proposals. Bid and proposal openings may be electronic virtual openings.

## **074. MISTAKES.**

The following procedures are established relative to claims of a mistake.

**01. Mistakes In Bids.** If a mistake is attributable to an error in judgment, the submission may not be corrected. Correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the administrator and to the extent it is not contrary to the interest of the division or the fair treatment of other submitting vendors.

**02. Mistakes Discovered Before Opening.** Mistakes detected prior to opening may be corrected by the submitting vendor by submitting a timely modification or withdrawing the original submission and submitting a corrected submission to the purchasing activity before the opening.

**03. Mistakes Discovered After Opening But Before Award.** This subsection sets forth procedures to be applied in three (3) situations described

below in which mistakes are discovered after opening but before award.

a. Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid or proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other submitting vendors, that is, the effect of the mistake on price, quantity, quality, delivery or contractual conditions is not significant. The buyer may waive such informalities. Examples include the failure of a submitting vendor to:

- i. Return the required number of signed submissions.
- ii. Acknowledge the receipt of an addendum, but only if:

(1) It is clear from the submission that the submitting vendor received the addendum and intended to be bound by its terms; or

(2) The addendum involved had a negligible effect on price, quantity, quality or delivery.

b. Mistakes Where Intended Submission is Evident. If the mistake and the intended submission are clearly evident on the face of the document, the submission shall be corrected to the intended submission and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the document are typographical errors, errors in extending unit prices (unit prices will always govern in event of conflict with extension), transposition errors and arithmetical errors.

c. Mistakes Where Intended Submission is not Evident. A vendor may be permitted to withdraw a low bid if:

- i. A mistake is clearly evident on the face of the submission document but the intended submission is not similarly evident; or
- ii. The vendor submits timely proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.

**04. Mistakes Discovered After Award.** Mistakes shall not be corrected after award of the contract.

**05. Written Approval Or Denial Required.** In the event of a mistake discovered after the opening date, the administrator shall approve or deny, in writing, a request to correct or withdraw a submission.

**075. -- 080. (RESERVED).**

**081. EVALUATION AND AWARD.**

Any contract award shall comply with these provisions.

**01. General.** The contract is to be awarded to the lowest responsible and responsive bidder or offeror. The solicitation shall set forth the requirements and criteria that will be used to make the lowest responsive and responsible determination. No submission shall be evaluated for any requirements or criteria that are not disclosed in the solicitation.

**02. Standards Of Responsibility.** Nothing herein shall prevent the buyer from establishing additional responsibility standards for a particular purchase, provided that these additional standards are set forth in the solicitation. Factors to be considered in determining whether a vendor is responsible include whether the vendor has:

- a. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements;
- b. A satisfactory record of integrity;
- c. Qualified legally to contract with the purchasing activity and qualified to do business in the state of Idaho;
- d. Unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility;
- e. Experience; or
- f. A prior performance record, if any.

**03. Information Pertaining To Responsibility.** A submitting vendor shall supply information requested by the buyer concerning its responsibility. If such submitting vendor fails to supply the requested information, the buyer shall base the determination of responsibility upon any available information or may find the submitting vendor nonresponsible if such failure is unreasonable.

**04. Written Determination of Nonresponsibility Required.** If a submitting vendor that otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the buyer.

**05. Extension Of Time For Acceptance.** After opening, the buyer may request submitting vendors to extend the time during which their bids or

proposals may be accepted, provided that, with regard to bids, no other change is permitted. The reasons for requesting such extension shall be documented.

**06. Partial Award.** A buyer shall have the discretion to award on an all or nothing basis or to accept any portion of a bid, excluding others, unless the bidder stipulates all or nothing in its bid.

**07. Only One Submission Received.** If only one (1) responsive submission is received in response to a solicitation, an award may be made to the single submitting vendor. In addition, the buyer may pursue negotiations in accordance with applicable conditions and restrictions of these rules. Otherwise, the solicitation may be rejected and:

- a. New bids or offers may be solicited; or
- b. The proposed acquisition may be canceled.

**082. TIE BIDS.**

The following provisions shall apply to tie bids as defined herein.

**01. Tie Bids - Definition.** Tie bids are low responsive bids from responsible bidders that are identical in price or score.

**02. Award.** Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the buyer, award shall be made in any permissible manner that will discourage tie bids. Procedures that may be used to discourage tie bids include:

- a. If price is considered excessive or for other reason such bids are unsatisfactory, reject all bids, rebid and seek a more favorable contract in the open market;
- b. Award to an Idaho resident or an Idaho domiciled bidder or for an Idaho produced product where other tie bid(s) are from out of state or to a bidder submitting a domestic product where other tie bid is for foreign (external to Idaho) manufactured or supplied property;
- c. Where identical low bids include the cost of delivery, award the contract to the bidder farthest from the point of delivery;
- d. Award the contract to the bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical;
- e. Award to the bidder with the earliest delivery date.

**03. Drawing Lots.** If no permissible method will be effective in discouraging tie bids and a written determination is made so stating, award may be made by drawing lots or tossing a coin in the presence of witnesses if there are only two (2) tie bids.

### **083. PROPOSAL DISCUSSION WITH INDIVIDUAL OFFERORS.**

**01. Classifying Proposals.** For the purpose of conducting proposal discussions under this rule, proposals shall be initially classified as:

- a. Acceptable;
- b. Potentially acceptable, that is reasonably susceptible of being made acceptable; or
- c. Unacceptable.

**02. "Offerors" Defined.** For the purposes of this rule, the term "offerors" includes only those persons submitting proposals that are acceptable or potentially acceptable. The term shall not include persons that submitted unacceptable proposals.

**03. Purposes Of Discussions.** Discussions are held to facilitate and encourage an adequate number of potential offerors to offer their best proposals, by amending their original offers, if needed.

**04. Conduct Of Discussions.** The solicitation document must provide for the possibility of discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The buyer should establish procedures and schedules for conducting discussions. If during discussions there is a need for clarification or change of the request for proposals, it shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information derived from competing proposals are prohibited. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.

**05. Best And Final Offer.** The buyer shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the buyer makes a written determination before each subsequent round of best and final offers demonstrating another round is in the purchasing agency's interest, and additional discussions will be conducted or the agency's requirements will be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final



offer.

#### **084. NEGOTIATIONS.**

In accordance with Section 67-5717(12), Idaho Code, the administrator may negotiate acquisitions as follows:

**01. Price Agreements.** The administrator may authorize and negotiate price agreements with vendors when such agreements are deemed appropriate. Price agreements shall provide for termination for any reason upon not more than thirty (30) days' written notice. Price agreements may be appropriate when:

- a. The dollar value of items or transactions is relatively small;
- b. The property may not be conducive to standard competitive bidding procedures, such as automobile, truck or other equipment parts having individual low unit costs;
- c. There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function but is represented by different manufacturers or needed in multiple locations; or
- d. Non-exclusive agreements for periods not exceeding two (2) years are deemed necessary to establish consistent general business terms, including without limitation, price, use of catalogs, delivery or credit terms.

**02. After A Competitive Solicitation.** Negotiations may be used under this rule when the administrator determines in writing that negotiations may be in the best interest of the state and that:

- a. A competitive solicitation has been unsuccessful because, without limiting other possible reasons, all offers are unreasonable, noncompetitive or all offers exceed available funds and the available time and circumstances do not permit the delay required for resolicitation;
- b. There has been inadequate competition; or
- c. During the evaluation process it is determined that more than one (1) vendor has submitted an acceptable proposal or bid and negotiations could secure advantageous terms or a reduced cost for the state.

**03. Examples.** Examples of situations in which negotiations, as permitted by Subsection 084.02.c. of this rule, may be appropriate include but are not limited to:

- a. Ensuring that the offering vendor has a clear understanding of the scope of work required and the requirements that must be met;

b. Ensuring that the offering vendor will make available the required personnel and facilities to satisfactorily perform the contract; or

c. Agreeing to any clarifications regarding scope of work or other contract terms.

**04. Conditions Of Use.** Negotiations, as permitted by Subsection 084.02.c. of this rule, are subject to the following:

a. The solicitation must specifically allow for the possibility of negotiation and describe, with as much specificity as possible, how negotiations may be conducted;

b. Submissions shall be evaluated and ranked based on the evaluation criteria in the solicitation;

c. Only those vendors whose proposals or bids are determined to be acceptable, in accordance with criteria for negotiations set forth in the solicitation, shall be candidates for negotiations;

d. Negotiations shall be conducted first with the vendor that is the apparent low responsive and responsible bidder;

e. Negotiations shall be against the requirements of and criteria contained in the solicitation and shall not materially alter those criteria, the specifications or scope of work;

f. Auction techniques (revealing one vendor's price to another) and disclosure of information derived from competing proposals is prohibited;

g. Any clarifications or changes resulting from negotiations shall be documented in writing;

h. If the parties to negotiations are unable to agree, the administrator shall formally terminate negotiations and may undertake negotiations with the next ranked vendor; and

i. If negotiations as provided for in this rule fail to result in a contract, as determined by the administrator, the solicitation may be cancelled and the administrator may negotiate in the best interest of the state with any qualified vendor.

**05. Timing Of Use.** If conducted, negotiations are the last step in the procurement process. Use of oral interviews or best and final procedures, as provided for in a solicitation, must precede negotiations as provided for in this rule.

**085. -- 090. (RESERVED).**

**091. ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS.**

Prior to the issuance of a purchase order or contract, the administrator shall have the right to accept or reject all or any part of a bid or proposal or any and all bids or proposals when:

- 01. Best Interest.** It is in the best interests of the state of Idaho;
- 02. Does Not Meet Specifications.** The submission does not meet the minimum specifications;
- 03. Not Lowest Responsible Bid.** The submission is not the lowest responsible submission;
- 04. Bidder Is Not Responsible.** A finding is made based upon available evidence that a submitting vendor is not responsible or otherwise capable of currently meeting specifications or assurance of ability to fulfill contract performance; or
- 05. Deviations.** The item offered deviates to a major degree from the specifications, as determined by the administrator (minor deviations, as determined by the administrator, may be accepted as substantially meeting the requirements of the state of Idaho). Deviations will be considered major when such deviations appear to frustrate the competitive process or provides a submitting vendor an unfair advantage.

**092. CANCELLATION OF SOLICITATION.**

Prior to the issuance of a purchase order or contract, the purchasing activity reserves the right to reject all bids, proposals or quotations or to cancel a solicitation or request for quotation. In the event of the cancellation of an invitation to bid or request for proposals, all submitting vendors will be notified. Examples of reasons for cancellation are:

- 01. Inadequate Or Ambiguous Specifications.**
- 02. Specifications Have Been Revised.**
- 03. Cancellation Is In Best Interest Of State.**

**093. NOTICE OF REJECTION.**

Bidders or offerors whose bids or proposals are rejected as non-responsive will be notified in writing of the reasons for such rejection.